Procedure Act 1963. The subsections as amended read: "Nothing in this section shall be deemed to apply to any statement made in the course of the identification parade or falling within sections 27 and 32(a) of the Evidence Ordinance." Section 212(3) of the Singapore Criminal Procedure Code was similarly amended by L.N. 214 of 1965. The cases I mentioned are therefore no longer law.

Both Sabah and Sarawak do not have provisions similar to section 113 and 124 of the F.M.S. Criminal Procedure Code as such provisions had long been repealed. Before 1961 Sabah had the provision of section 102(1) in the Criminal Procedure Code similar to the provision of section 113(1) of the F.M.S. Code. However the whole section 102 was repealed by section 16 of the Criminal Procedure Code (Amendment) Ordinance, 1961 (No. 26 of 1961).

In the absence of such provision the general rules of evidence as to admissibility and relevance apply. Consequently there is nothing to prevent the admissibility of a statement made to police officer in the course of investigation except if such statement amounts to a confession. Section 25 of the Evidence Ordinance provides that no confession made to a police officer shall be proved against a person accused of any offence. Where the prosecution relies on the evidence of the identification parade it must satisfy the court that such parade was fairly and properly conducted. The police must not directly or indirectly do anything which might prevent the identification from being absolutely independent. They must be most scrupulous in seeing that it is so.

In *Chapman* v. *R.*[4] the appellant was convicted of having carnal knowledge of a girl under thirteen years of age. It was held that the identification of a suspected person must be carefully conducted and that it is wrong to point out the suspected person and ask "Is that the man?". Lord Alverston C.J. in the course of delivering a short judgment of the Court of Criminal Appeal observed:

"One of the boys is taken to the tent where the prisoner was. The boy thought it was another man. Later on both the boys were taken to the guard tent, where the prisoner then was, and there was only one other man besides prisoner. The police sergeant asked 'Is that the man?' That is not a satisfactory way of identification, whether the persons identifying were young or old. It is not right to point out and ask questions in this way. The usual and proper way in such cases is to place the suspected man with a sufficient number of others, and to have the identifying person pick out a man without assistance. Although identification is difficult, this method does strengthen it."

Similarly in the Sarawak case of *Chang Kim Siong* v. *Public Prosecutor*[5] a witness was given an opportunity by the police to see the accused prior to the formal identification at the identification parade. The Federal Court held that evidence of subsequent identification at the parade by the witness was vitiated.

In the instant case the police had acted fairly and properly in conducting the identification parade. A senior police officer of considerable experience was in charge of the identification. He had acted in a most scrupulous manner to ensure that the identification was absolutely independent and that the complainant was confined in a room in the charge of an inspector.

The accused elected to give his story from the dock. He was entitled to do so. If what Saribut and Majid said were true then the accused was with them at the beach where the complainant was collecting firewood. The two of course would not know what happened after the accused left them as they were on their way to Kampong Tajau. But the accused said he was at work at Sequati that afternoon. One of the two stories must be false. The accused had no reason to lie to his mother that he was going to work in a ship. Koh Kok Yin testified that in the early morning of June 28, 1969 the accused came and collected $75 from him and did not come back to work that day. The accused only completed half the work of carrying the cement. He did not say why he suddenly decided to go to work at Sequati. Although he mentioned working with friends none of his friends was called to give evidence. I have seen and heard him. I am not impressed by the accused as I am impressed by the complainant, Saribut and Majid. I think he invented the story about working at Sequati to show that he was nowhere near the scene of the crime.

On the evidence I am satisfied beyond reasonable doubt that the accused was the person who raped the complainant. Accordingly I find the accused guilty of the offence charged.

Verdict — Guilty

CHONG FOOK KAM & ANOR. v. SHAABAN & ORS.

[F.C. Suffian Ag. L.P., Gill and Ali F.JJ.) June 5, 1970]

[Kuala Lumpur — Federal Court Civil Appeal No. X. 31 of 1967]

Damages — Agreed damages — Whether open to appellate court to review quantum.

In this case the appellants (plaintiffs) had succeeded in the Federal Court ([1968] 2 M.L.J. 50) in their claim against the respondents for damages for false imprisonment and it was agreed that the damages be fixed at $5,000. On appeal by the respondents the Privy Council ([1969] 2 M.L.J. 219), upheld the decision of the Federal Court as regards liability though for different reasons but thought that the damages were extremely high. They therefore advised the Yang di-Pertuan Agong to remit the case to the Federal Court for it "to decide whether it is open to it to review the amount of the damages and, if so, to settle the appropriate figure in the light of their Lordships' judgment and vary its order accordingly."

Held: as the damages had been agreed, the court had no jurisdiction in the absence of agreement by the appellants (plaintiffs) to review the quantum.

Cases referred to:-

(1) *R.S. Lopes* v. *N.K.V. Valliappa Chettiar* [1968] 1 M.L.J. 225, P.C.

(2) *Norcott* v. *Norcott* (1702) 22 E.R. 236.

(3) *Ainsworth* v. *Wilding* [1896] 1 Ch. 673.

(4) *Wilding* v. *Sanderson* [1892] 2 Ch. 534.

(5) *Kinch* v. *Walcott & Ors.* [1929] A.C. 482.

FEDERAL COURT.

Ajaib Singh (Senior Federal Counsel) for the applicants.

Dato' S. P. Seenivasagam (*D. P. Xavier* with him) for the respondents.

Suffian Ag. L.P. (read by Gill F.J.): This is an application to reduce damages awarded by this court.

A lorry driver and his attendant (plaintiffs in the lower court and respondents here) were arrested by the police. They sued the two senior police officers concerned and the Federal Government (defendants-appellants) for damages for false imprisonment. They lost in the High Court. They appealed and succeeded in the Federal Court and were awarded $5,000 damages. On appeal by the defendants, the Privy Council upheld the decision of the Federal Court as regards liability though for different reasons, but thought that the damages were extremely high. Accordingly their Lordships advised the Yang di-Pertuan Agong to remit the case to the Federal Court for it "to decide whether it is open to it to review the amount of the damages and, if so, to settle the appropriate figure in the light of their Lordships' judgment and vary its order accordingly".

Their Lordships observed that the sum of $2,500 for each plaintiff was equivalent to five months' wages with overtime and that this was excessive because the scope for compensatory damages must be confined to approximately nine hours' detention.

Difficulty is caused here by the fact that the quantum had been *agreed* by the parties. Their Lordships themselves recognized this when they said,

"... there is in fact a formidable obstacle to a review of the damages by any court. At the conclusion of the argument in the Federal Court, the court said that it would allow the appeal giving its reasons later, and then adjourned before judgment was entered so that counsel might agree upon the quantum of damages. When judgment was entered, the figure of $5,000 was awarded as *agreed* damages. The agreement must have been reached on a view of the case which the Board has found to be incorrect. Whether this or any other of the circumstances in which the agreement was made was such as to permit a review is a matter for the Federal Court to determine."

I must say that I was startled when, after judgment had been given for the plaintiffs as regards liability, counsel returned to court a few minutes later to announce the amount of damages agreed which was out of line with other awards by the Malayan courts. A few days later the suspicion dawned on me that the Government had agreed to pay $5,000 probably to make sure of an easy passage to the Privy Council. An appeal lies there only with leave where the matter in dispute does not amount to $5,000, but it lies *as of right* where the matter in dispute amounts to $5,000 or more (*R. S. Lopes* v. *N. K. V. Valliappa Chettiar*.[1] At the hearing before us of this application Mr. Ajaib Singh for the defendants confirmed my suspicion.

He submitted that this court had jurisdiction to reduce the damages by virtue of section 69(4) of the Courts of Judicature Act, 1964, which provides that in an appeal the Federal Court "may make any order which ought to have been given or made, and make such further or other orders as the case may require".

Dato' Seenivasagam for the plaintiffs stressed that the judgment of the Federal Court was in two parts, that the first part (as regards liability) was arrived at after a contest and that the second part (as regards quantum of damages) was a consent judgment. His clients did not agree to the damages being reduced and he submitted that the Federal Court had no jurisdiction to review the second part of the judgment in the absence of agreement by his clients. He relied on two authorities: *Norcott* v. *Norcott*[2] and *Ainsworth* v. *Wilding*.[3]

Before stating my conclusion it is important to observe that their Lordships of the Privy Council did not order us to reduce the quantum, but merely asked us to decide whether it is open to us to review the quantum and, if so, to settle the appropriate figure.

Having considered the authorities, I am of the opinion that we have no jurisdiction, in the absence of agreement by the plaintiffs, to review the quantum here

As long ago as the year 1702 it was held in *Norcott* v. *Norcott* that whenever a decree had been entered by consent, the merits shall never afterwards be enquired into, unless there was an objection that the word "consent" be struck out of the order.

In *Ainsworth* v. *Wilding* decided nearly two centuries later it was held that after a consent judgment had been entered the court could not set it aside otherwise than in a fresh action brought for the purpose except in two cases which are irrelevant for the purpose of this application.

Wilding v. *Sanderson*[4] is to the same effect. There Byrne J. said at page 543:

"A consent judgment or order is meant to be the formal result and expression of an agreement already arrived at between the parties to proceedings embodied in an order of the Court. The fact of its being so expressed puts the parties in a different position from the position of those who have simply entered into an ordinary agreement. It is, of course, enforceable while it stands and a party affected by it cannot, if he conceives he is entitled to relief from its operation, simply wait until it is sought to be enforced against him, and then raise by way of defence the matters in respect of which he desires to be relieved. It must, when once it has been completed, be obeyed, unless and until he can get it set aside in proceedings duly constituted for the purpose."

This passage was approved by the Privy Council in *Kinch* v. *Walcott & Ors.*.[5] In delivering their advice Lord Blanesburgh said at page 493:

"..... an order by consent, not discharged by mutual agreement, and remaining unreduced, is as effective as an order of the court made otherwise than by consent and not discharged on appeal. A party bound by a consent order, as was tersely observed by Byrne J. in *Wilding* v. *Sanderson*, 'must, when once it has been completed, obey it, unless and until he can get it set aside in proceedings duly constituted for the purpose.' In other words, the only difference in this respect between an order made by consent and one not so made is that the first stands unless and until it is discharged by mutual agreement or is set aside by another order of the court; the second stands unless and until it is discharged on appeal".

I would therefore decline to review the quantum and order the taxed costs of this application to be paid by the defendants.

Gill and **Ali F.JJ.** concurred.

No order.

Solicitors: *D. P. Xavier & Co.*